

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Docket No. 1:04-CR-10194-RCL

UNITED STATES of AMERICA,

v.

FRANCIS MUOLO, Anthony
Bucci and David Jordan,
Defendants.

MOTION TO SUPPRESS EVIDENCE

N O W C O M E S defendant, FRANCIS MUOLO, and moves pursuant to FRCrimP Rule 12 (b)(3)(C) and the Fifth Amendment, US Const., for an order suppressing certain statements to governmental agents made under custodial interrogation on or about May 18 and 20, 2004. The statements should be suppressed because they are presumptively coercive. See, *Dickerson v. United States*, 530 U. S. 428, 444 (2000). Mr. Muolo was restrained to a degree ordinarily associated with formal arrest and he was not timely advised of his *Miranda* rights. *Miranda v. Arizona*, 384 U. S. 436 (1966). Mr. Muolo made statements after receiving *Miranda* warnings on May 20, 2005 and these too should be suppressed because they are tainted by the illegality of the earlier statements. See, *Missouri v. Seibert*, 124 S. Ct. 2601, 2608 (2004).¹

¹ In this Circuit, see, *US v. Faulkingham*, F. 3d 85 (1 Cir. 2002)(negligent *Miranda* violation not reason to suppress physical evidence).

The Defense requests a testimonial hearing on this motion and the advance production by the Government of any witness statements in accordance with Rule 26.2 (a). The burden of proving admissibility rests on the Government. *Brown v. Illinois*, 422 U. S. 590, 604 (1975). The Government bears the burden of proving the *Miranda* waiver and the voluntariness of the confession. *Lego v. Twomey*, 404 U. S. 477, 489 (1972); *Colorado v. Connelly*, 479 U. S. 157, 169 (1986).

Mr. Muolo offers a memorandum of law in support of this motion.

This motion should be granted for the reasons set forth above and as may be established after hearing.

Dated this 7th day of May, 2005 at Boston, Massachusetts.

/s/ Kevin L. Barron

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